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EPLUS INC  
Form 8-K  
August 06, 2008

United States  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): August 6, 2008 (July 31, 2008)

ePlus inc.  
(Exact name of registrant as specified in its charter)

Delaware	000-28926	54-1817218
(State or other jurisdiction of incorporation or organization)	(Commission File Number)	(I.R.S. Employer Identification No.)

13595 Dulles Technology Drive, Herndon, VA 20171-3413  
(Address, including zip code, of principal executive offices)

Registrant's telephone number, including area code: (703) 984-8400

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2 below):

Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers

On July 31, 2008, the Board of Directors of ePlus inc. (the “Company”) adopted the ePlus inc. Fiscal Year 2009 Executive Incentive Plan (the “Plan”), effective August 6, 2008. The Plan provides for the payment of performance-based cash incentive compensation to eligible executive employees.

The Plan is administered by the Compensation Committee of the Board (the “Committee”), which has full authority to determine the participants in the Plan, the terms and amounts of each participant’s minimum, target and maximum awards, and the period during which the performance is to be measured.

The Committee will determine the corporate, unit and individual performance objectives to be achieved. Awards in the form of annual cash payments will be based on the level of attainment of the applicable performance objectives. The criteria upon which the performance goals shall be based will be determined in the discretion of the Committee.

The award amount payable is a percentage of base salary based on the level of attainment of the applicable performance goals as set forth in the participant’s award agreement. The Committee may not waive or amend performance goals or increase the amount payable pursuant to awards after the performance goals have been established but has discretionary authority to reduce the amount that would otherwise be payable with respect to any award. If a participant’s employment with the Company terminates due to death, disability or retirement, the Committee may in its discretion make a payment to the participant or his beneficiary, as the case may be, up to an amount equal to the value of the target award for the relevant performance period in which the termination occurs, multiplied by a fraction, the numerator of which is the number of months (including partial months) in the period beginning on the first day of the relevant performance period and ending with the date as of which the participant’s employment with the Company so terminated, and the denominator of which is the number of months in such performance period.

To date, for the fiscal year 2009, the Committee has selected two participants in the Plan. The Company anticipates that additional participants may be selected in the future by the Committee. The two participants already selected are Phillip G. Norton (President and Chief Executive Officer) and Bruce M. Bowen (Executive Vice President). For these two participants, the 2009 performance criteria and their relative weights for each participant are as follows: company financial performance, 66.6%; and individual performance, 33.3%. The Company financial performance will be determined in accordance with generally accepted accounting principles. Such earnings will be adjusted to exclude the following: (i) the incentive compensation accrued by the Company under the Plan, (ii) all items of income, gain or loss determined by the Board to be extraordinary or unusual in nature and not incurred or realized in the ordinary course of business, whether or not those items would otherwise be deemed extraordinary in accordance with the standards established by Opinion No. 39 of the Accounting Principles Board; and (iii) any income, gain or loss attributable to the business operations of any entity acquired by the Company during the 2009 fiscal year. The cash incentive compensation for fiscal year 2009 can range from 0% to a maximum of 50% of the executive’s base salary.

A copy of the Plan is filed as Exhibit 10.1 hereto and is incorporated herein by reference.

Item 8.01 Other Events

On July 31, 2008, the Company announced that its Board of Directors authorized a common stock repurchase program for 500,000 shares of common stock, effective August 4, 2008. The program is intended to be implemented through purchases made from time to time in the open market or through private transactions. The program will terminate on August 4, 2009.

A copy of the press release issued by the Company announcing the share repurchase program is filed as Exhibit 99.1 hereto and is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits:

Exhibit No.	Description
10.1	ePlus inc. Fiscal Year 2009 Executive Incentive Plan
99.1	Press release dated July 31, 2008 issued by ePlus inc.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

ePlus inc.

By: /s/ Steven J. Mencarini  
Steven J. Mencarini  
Chief Financial Officer

Date: August 6, 2008

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ffff" noWrap> \$269,000

Estimated average selling price of homes in backlog

\$384.1 \$334.0 \$352.0 \$316.4 \$319.5

Active subdivisions at period end

134 166 148 187 148

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## **Risk Factors**

*Before purchasing the notes offered hereby, you should consider all of the information set forth in this prospectus supplement, the accompanying prospectus and the information incorporated herein by reference, and, in particular, you should evaluate the risk factors set forth below and in the accompanying prospectus.*

### **Risks Relating to Our Business**

*The homebuilding industry is cyclical and affected by changes in general economic, real estate and other business conditions that could adversely affect our business or financial results.*

The homebuilding industry is cyclical and is significantly affected by changes in industry conditions, as well as in general and local economic conditions, such as:

- employment levels;
- availability of financing for homebuyers;
- interest rates;
- consumer confidence;
- levels of new and existing homes for sale;
- demographic trends; and

- housing demand.

These conditions may exist on a national level, like the recent downturn, or may affect some of the regions or markets in which we operate more than others. When adverse conditions affect any of our larger markets, they could have a proportionately greater impact on us than on some other homebuilding companies.

An oversupply of alternatives to new homes, including foreclosed homes, homes held for sale by investors and speculators, other existing homes, and rental properties, can also reduce our ability to sell new homes, depress new home prices and reduce our margins on the sale of new homes. High levels of foreclosures and short-sales not only contribute to additional inventory available for sale, but also can reduce appraisal valuations for new homes, potentially resulting in lower sales prices.

Continued military deployments, terrorist attacks, other acts of violence or threats to national security, and any corresponding response by the United States or others, or related domestic or international instability, may adversely affect general economic conditions or cause a slowdown of the economy.

The impact of the Affordable Care Act could adversely affect individuals and businesses, which could negatively impact homebuyer discretionary spending and demand for new homes.

As a result of the foregoing matters, potential customers may be less willing or able to buy our homes. In the future, our pricing strategies may continue to be limited by market conditions. We may be unable to change the mix of our home offerings, reduce the costs of the homes we build or offer more affordable homes to maintain our gross margins or satisfactorily address changing market conditions in other ways. In addition, cancellations of home sales contracts in backlog may increase as homebuyers choose to not honor their contracts.

Our financial services business is closely related to our homebuilding business, as it originates mortgage loans principally to purchasers of the homes we build. A decrease in the demand for our homes because of the foregoing matters may also adversely affect the financial results of this segment of our business. An increase in the default rate on the mortgages we originate may adversely affect our ability to sell the mortgages or the pricing we receive upon the sale of mortgages or may increase our potential exposure regarding those mortgage loan sales.





***A deterioration in homebuilding industry conditions or in the broader economic conditions, including government shutdowns and debt ceiling debates, could have adverse effects on our business and financial results.***

The recovery in the housing market has been negatively impacted by the continuing effects of the recent recession, including high unemployment rates, high levels of foreclosures and homeowners in default or with negative equity under their current mortgages, more stringent mortgage loan underwriting standards and difficulty in customers' ability to qualify for mortgage loans.

In the event of another downturn in the homebuilding and mortgage lending industries, or if the national economy weakens as a result of a decline in consumer confidence, government shutdowns, debt ceiling debates or other causes, we could experience declines in the market value of our inventory and demand for our homes, which could have a significant negative impact on our gross margin from home sales and financial and operating results.

Monetary policy tightening and tapering of bond purchases by the Federal Reserve could have an adverse effect on interest rates, including mortgage interest rates, equity markets and consumer confidence, which could have a material adverse effect on the homebuilding industry and our results of operations.

Additionally, as a result of recent economic circumstances, we may be subject to increased counterparty risks, which may include, among others, banks under our credit facilities and mortgage purchasers who may not be willing or able to perform on obligations to us. To the extent a third-party is unable to meet its obligations to us, our financial position, results of operations and/or cash flows could be negatively impacted.

These challenging conditions are complex and interrelated. We cannot predict their occurrence or severity, nor can we provide assurance that our responses would be successful.

***Increased competition levels in the homebuilding and mortgage lending industries could result in lower net home orders, deliveries and decreases in the average selling prices of sold and delivered homes, which would have a negative impact on our home sale revenues and results of operations.***

The homebuilding industry is fragmented and highly competitive. Our homebuilding subsidiaries compete with numerous public and private homebuilders, including a number that are substantially larger than us and may have greater financial resources than we do. Our homebuilding subsidiaries also compete with subdivision developers and land development companies, some of which are themselves homebuilders or affiliates of homebuilders. Homebuilders compete for customers, land, building materials, subcontractor labor and desirable financing.

Competition for home orders primarily is based upon home sales price, location of property, home style, financing available to prospective homebuyers, quality of homes built, customer service and general reputation in the community, and may vary market-by-market and/or submarket-by-submarket. Additionally, competition within the homebuilding industry can be impacted by an excess supply of new and existing homes available for sale resulting from a number of factors, including, among other things, increases in the number of new home communities, increases in unsold started homes available for sale and increases in home foreclosures. Increased competition can result in a decrease in our new home orders, a decrease in our home sales prices and/or an increase in our home sales incentives in an effort to generate new home sales and maintain homes in backlog until they close. These competitive pressures may negatively impact our future financial and operating results.

Through our mortgage lending subsidiary, HomeAmerican, we also compete with numerous banks and other mortgage bankers and brokers, many of which are larger than us and may have greater financial resources than we do. Competitive factors include pricing, mortgage loan terms, underwriting criteria and customer service. To the extent that we are unable to adequately compete with other companies that originate mortgage loans, total revenue and the results of operations from our mortgage operations may be negatively impacted.

***If land is not available at reasonable prices or terms, our homes sales revenue and results of operations could be negatively impacted and/or we could be required to scale back our operations in a given market.***

Our operations depend on our homebuilding subsidiaries' ability to obtain land for the development of our residential communities at reasonable prices and with terms that meet our underwriting criteria. Our ability to obtain land for new residential communities may be adversely affected by changes in the general availability of land, the willingness of land sellers to sell land at reasonable prices, competition for available land, availability of financing to acquire land, zoning, regulations that limit housing density, and other market conditions. If the supply of land, and especially finished lots, appropriate for development of residential communities continues to be limited because of these factors, or for any other reason, the number of homes that our homebuilding subsidiaries build and sell may decline. To the extent that we are unable to timely purchase land or enter into new contracts for the purchase of land at reasonable prices, due to the lag time between the time we acquire land and the time we begin selling homes, our home sale revenues and results of operations could be negatively impacted and/or we could be required to scale back our operations in a given market.

***Supply shortages and other risks related to the demand for skilled labor and building materials could increase costs and delay deliveries.***

The residential construction industry experiences labor and material shortages from time to time, including: work stoppages; labor disputes; shortages in qualified trades people; lack of availability of adequate utility infrastructure and services; our need to rely on local subcontractors who may not be adequately capitalized or insured; and delays in availability, or fluctuations in prices, of building materials. These labor and material shortages can be more severe during periods of strong demand for housing or during periods in which the markets where we operate experience natural disasters that have a significant impact on existing residential and commercial structures. Additionally, we could experience labor shortages as a result of subcontractors going out of business or leaving the residential construction market due to low levels of housing production and volumes. Any of these circumstances could give rise to delays in the start or completion of our residential communities, increase the cost of developing one or more of our residential communities and/or increase the construction cost of our homes. To the extent that market conditions prevent the recovery of increased costs, including, among other things, subcontracted labor, finished lots, building materials, and other resources, through higher selling prices, our gross margin from home sales and results of operations could be adversely affected.

Increased costs of lumber, framing, concrete, steel and other building materials could cause increases in construction costs. We generally are unable to pass on increases in construction costs to customers who have already entered into sales contracts, as those sales contracts fix the price of the homes at the time the contracts are signed, which may be in advance of the construction of the home. Sustained increases in construction costs may, over time, erode our gross margin from home sales, particularly if pricing competition restricts our ability to pass on any additional costs of materials or labor, thereby decreasing our gross margin from home sales.

***If mortgage interest rates rise, if down payment requirements are increased, if loan limits are decreased, or if mortgage financing otherwise becomes less available, it could adversely affect our business, and the duration and ultimate severity of the effects are uncertain.***

The mortgage lending industry continues to experience significant instability. Beginning in 2014, new regulations will take effect that may, among other things, cap the fees and place additional restrictions on what our mortgage company and its affiliates may collect, limit the types of loans our mortgage company may originate and place additional restrictions on loans that are sold to entities such as Fannie Mae and Freddie Mac, insured by the FHA or guaranteed by VA. The ultimate impact of these changes is uncertain and may have a negative impact on our financial position, results of operations and/or cash flows.

We believe that the liquidity provided by Fannie Mae and Freddie Mac to the mortgage industry has been very important to the housing market. The future of these entities is in question. Any reduction in the availability of the liquidity provided by these institutions could adversely affect interest rates, mortgage availability and our sales of new

homes and mortgage loans.

Mortgage liquidity provided by government sponsored enterprises (GSEs) like the FHA, VA, Fannie Mae and Freddie continues to be an important factor in marketing our homes. Financial losses or other factors may limit, restrict or otherwise curtail their ability or willingness to insure mortgage loans, offer insurance at rates and on terms that are not prohibitive, or purchase mortgage loans. Should this occur, it may negatively impact the availability of mortgage financing and our sales of new homes.

Loans sold to or insured by the GSEs are subject to various loan limits. Decreases in these loan limits may require homebuyers to make larger down payments or obtain more restrictive non-conforming or “jumbo” mortgages, which could adversely impact on our financial position, results of operations and/or cash flows.

Even if potential customers do not need financing, changes in the availability of mortgage products may make it harder for them to sell their current homes to potential buyers who need financing.

If interest rates increase, the costs of owning a home may be affected and could result in further reductions in the demand for our homes. Similarly, potential changes to the tax code with respect to deduction of home mortgage interest payments or other changes may decrease affordability of and demand for homeownership.

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***Expirations, amendments or changes to tax laws, incentives or credits currently available to our customers may negatively impact our business.***

Many homeowners receive substantial tax benefits in the form of tax deductions against their personal taxable income for mortgage interest and property tax payments and the loss or reduction of these deductions could affect homeowners' net cost of owning a home. Also, federal or state governments have in the past provided for substantial benefits in the form of tax credits for buyers of new or used homes. Significant changes to existing tax laws that currently benefit homebuyers, such as the ability to deduct mortgage interest and real property taxes, may result in an increase in the total cost of home ownership and may make the purchase of a home less attractive to buyers. This could adversely impact demand for and/or sales prices of new homes, which would have a negative impact on our business.

***Increases in our cancellations could have a negative impact on our gross margin from home sales and home sale revenues.***

Home order cancellations can result from a number of factors, including declines in the market value of homes, increases in the supply of homes available to be purchased, increased competition, higher mortgage interest rates, homebuyers' inability to sell their existing homes, homebuyers' inability to obtain suitable financing, including providing sufficient down payments, and adverse changes in economic conditions.

Increased levels of home order cancellations could have a negative impact on our home sale revenues and financial and operating results in future reporting periods.

***A decline in the market value of our homes or carrying value of our land would have a negative impact on our results of operations and financial position.***

Our homebuilding subsidiaries acquire land for the replacement of land inventory and/or expansion within our current markets and may, from time to time, purchase land for expansion into new markets. The fair value of our land and land under development and housing completed or under construction inventory depends on market conditions. Factors that can impact our determination of the fair value of our inventory primarily include home sales prices, levels of home sales incentives and home construction and land costs. Our home sales prices and/or levels of home sales incentives can be impacted by, among other things, uncertainty in the homebuilding and mortgage industries or the United States economy overall, decreased demand for new homes, decreased home prices offered by our competitors, home foreclosure and short-sale levels, decreased ability of our homebuyers to obtain suitable mortgage loan financing and high levels of home order cancellations. Under such circumstances, we may be required to record additional impairments of our inventory. Any such additional inventory impairments would have a negative impact on

our financial position and results of operations in the future reporting period in which they were recorded.

***Natural disasters could cause an increase in home construction costs, as well as delays, and could negatively impact our results of operations.***

The climates and geology of many of the markets in which we operate present increased risks of natural disasters. To the extent that hurricanes, severe storms, earthquakes, droughts, floods, heavy or prolonged precipitation, wildfires or other natural disasters or similar events occur, the financial and operating results of our business may be negatively impacted.

***We have financial needs that we meet through the capital markets, including the debt and secondary mortgage markets, and disruptions in these markets could have an adverse impact on our results of operations, financial position and/or cash flows.***

We have financial needs that we meet through the capital markets, including the debt and secondary mortgage markets. Our requirements for additional capital, whether to finance operations or to service or refinance our existing indebtedness, fluctuate as market conditions and our financial performance and operations change. We cannot provide assurance that we will maintain cash reserves and generate sufficient cash flow from operations in an amount to enable us to service our debt or to fund other liquidity needs.

The availability of additional capital, whether from private capital sources or the public capital markets, fluctuates as our financial condition and market conditions in general change. There may be times when the private capital markets and the public debt or equity markets lack sufficient liquidity or when our securities cannot be sold at attractive prices, in which case we would not be able to access capital from these sources. In addition, a weakening of our financial condition or deterioration in our credit ratings could adversely affect our ability to obtain necessary funds. Even if financing is available, it could be costly or have other adverse consequences.

In addition, the sources and terms and conditions of warehouse financing and mortgage repurchase arrangements and other lending arrangements for the mortgage lending industry are changing. These changes can impact, among other things, availability of capital, terms and structures for debt and line of credit agreements, collateral requirements and collateral advance rates.

***Our business is subject to numerous federal, local and state laws and regulations concerning land development, construction of homes, sales, mortgage lending, environmental and other aspects of our business. These laws and regulations could give rise to additional liabilities or expenditures, or restrictions on our business.***

Our operations are subject to continuing compliance requirements mandated by applicable federal, state and local statutes, ordinances, rules and regulations, including zoning and land use ordinances, building, plumbing and electrical codes, contractors' licensing laws, state insurance laws, federal and state human resources laws and regulations and health and safety laws and regulations. Various localities in which we operate have imposed (or may impose in the future) fees on developers to fund schools, road improvements and low and moderate-income housing.

From time to time, various municipalities in which our homebuilding subsidiaries operate restrict or place moratoria on the availability of utilities, including water and sewer taps. Additionally, certain jurisdictions in which our homebuilding subsidiaries operate have proposed or enacted "slow growth" or "no growth" initiatives and other measures that may restrict the number of building permits available in any given year. These initiatives or other slow or no growth measures could reduce our ability to open new subdivisions and build and sell homes in the affected markets and may create additional costs and administration requirements, which in turn could negatively impact our future home sales and results of operations.

Our homebuilding operations also are affected by environmental laws and regulations pertaining to availability of water, municipal sewage treatment capacity, stormwater discharges, land use, hazardous waste disposal, dust controls, building materials, population density and preservation of endangered species, natural terrain and vegetation.

The particular environmental laws and regulations that apply to any given homebuilding project vary greatly according to a particular site's location, the site's environmental conditions and the present and former uses. These environmental laws may result in project delays, cause us to incur substantial compliance and other costs and/or prohibit or severely restrict homebuilding activity in certain environmentally sensitive locations.

We also are subject to rules and regulations with respect to originating, processing, selling and servicing mortgage loans, which, among other things: prohibit discrimination and establish underwriting guidelines; provide for audits and inspections; require appraisals and/or credit reports on prospective borrowers and disclosure of certain information concerning credit and settlement costs; establish maximum loan amounts; prohibit predatory lending

practices; and regulate the referral of business to affiliated entities. The turmoil caused by the increased number of defaults in subprime and other mortgages during the last industry downturn has encouraged ongoing consumer lawsuits and the investigation of financial services industry practices by governmental authorities. These investigations have included the examination of consumer lending practices, sales of mortgages to financial institutions and other investors and the practices in the financial services segments of homebuilding companies. New rules and regulations or revised interpretations of existing rules and regulations applicable to our mortgage lending operations could result in more stringent compliance standards, which may substantially increase costs of compliance.

***In the ordinary course of business, we are required to obtain surety bonds, the unavailability of which could adversely affect our results of operations and/or cash flows.***

As is customary in the homebuilding industry, we often are required to provide surety bonds to secure our performance under construction contracts, development agreements and other arrangements. Our ability to obtain surety bonds primarily depends upon our credit rating, capitalization, working capital, past performance, management expertise and certain external factors, including the overall capacity of the surety market and the underwriting practices of surety bond issuers. The ability to obtain surety bonds also can be impacted by the willingness of insurance companies to issue surety bonds. If we were unable to obtain surety bonds when required, our results of operations and/or cash flows could be adversely impacted.



***Decreases in the market value of our investments in marketable securities could have an adverse impact on our results of operations.***

We have a material amount of investments in marketable securities, the market value of which is subject to changes from period to period. Decreases in the market value of our marketable securities could have an adverse impact on our statements of financial position, results of operations and cash flow.

***Product liability litigation and warranty claims that arise in the ordinary course of business may be costly.***

As a homebuilder, we are subject to construction defect and home warranty claims, as well as claims associated with the sale and financing of our homes arising in the ordinary course of business. These types of claims can be costly. The costs of insuring against construction defect and product liability claims can be high and the amount of coverage offered by insurance companies may be limited. If we are not able to obtain adequate insurance against these claims, we may incur additional expenses that would have a negative impact on our results of operations in future reporting periods. Additionally, changes in the facts and circumstances of our pending litigation matters could have a material impact on our results of operations and cash flows in future reporting periods.

***Further uncertainty in the mortgage lending industry, including repurchase requirements associated with HomeAmerican's sale of mortgage loans, could negatively impact our results of operations.***

We are subject to risks associated with mortgage loans, including conventional mortgage loans, FHA and VA mortgage loans, previously originated and sold Alt-A and sub-prime mortgage loans, second mortgage loans, high loan-to-value mortgage loans and jumbo mortgage loans (mortgage loans with principal balances that exceed various thresholds in our markets). These risks may include, among other things, compliance with mortgage loan underwriting criteria and the associated homebuyers' performance, which could require HomeAmerican to repurchase certain of those mortgage loans or provide indemnification. Repurchased mortgage loans and/or the settlement of claims associated with such loans could have in the future a substantial impact on HomeAmerican's results of operations, liquidity and cash flow.

***Because of the seasonal nature of our business, our quarterly operating results can fluctuate.***

We may experience noticeable seasonality and quarter-to-quarter variability in homebuilding activity levels. In general, the number of homes delivered and the associated home sale revenues increase during the third and fourth quarters, compared with the first and second quarters. We believe that this type of seasonality reflects the historical

tendency of homebuyers to purchase new homes in the spring and summer with deliveries scheduled in the fall or winter, as well as the scheduling of construction to accommodate seasonal weather conditions in certain markets.

***We are dependent on the services of key employees, and the loss of their services could hurt our business.***

Although we believe that we have made provision for adequately staffing current operations, because of our efforts to “right-size” our organization at times during the past seven years, retaining our skilled people has become a critical area of focus. Our future success depends, in part, on our ability to attract, train and retain skilled personnel. If we are unable to retain our key employees or attract, train and retain other skilled personnel in the future, it could have an adverse impact on our financial and operating results.

***Information technology failures and data security breaches could harm our business.***

We and our financial services operations use information technology and other computer resources to carry out important operational activities and to maintain our business records. These information technology systems are dependent upon electronic systems and other aspects of the internet infrastructure. A material breach in the security of our information technology systems or other data security controls could result in third parties obtaining customer, employee or company data. Such occurrences could have a material and adverse effect on our consolidated results of operations or financial position.

## Risks Relating to the Notes

*Our substantial level of indebtedness could adversely affect our financial condition and prevent us from fulfilling our obligations on the notes.*

We have, and after consummation of this offering will continue to have, significant debt service obligations. At September 30, 2013, we had total consolidated indebtedness of approximately \$1,134 million, including approximately \$39.0 million of obligations of our subsidiaries that are not guarantors to which the notes offered hereby would be structurally subordinated. We also entered into the Credit Facility on December 13, 2013, under which we had no borrowings outstanding as of December 31, 2013 (excluding \$14.9 million of outstanding letters of credit). See “Description of Certain Other Indebtedness – Unsecured Revolving Credit Facility.”

*Possible Consequences:* The degree to which we are leveraged could have important consequences to you, including:

our ability to obtain additional financing for working capital, capital expenditures, acquisitions, debt service requirements or other purposes may be limited;

a substantial portion of our cash flows from operations must be used to pay principal and interest on the notes and other indebtedness, which will reduce the funds available to us for other purposes;

our level of indebtedness could limit our flexibility in planning for, or reacting to, changes in our business; and

our indebtedness could make us more vulnerable in the event the downturn in our business or in general economic conditions continues.

*Dependence on Future Performance:* Our ability to meet our debt service and other obligations will depend upon our future performance and we may not be able to meet such obligations. We are engaged in businesses that are substantially affected by changes in economic cycles, and our revenues and earnings vary with the level of general economic activity in the markets in which we build homes, many of which are beyond our control.

*Indenture Restrictions:* Our indentures governing our outstanding notes impose certain restrictions on secured debt and other transactions. Our senior notes are not secured and, while the senior note indentures contain some restrictions on secured debt and other transactions, they do not contain financial covenants. If we fail to comply with any of these restrictions, the trustees or the noteholders, as applicable, could cause our debt to become due and payable prior to

maturity.

*Unavailability of Additional Funds:* In the event that internally generated funds are not sufficient to fund our capital expenditures and our debt service obligations, including the notes, we would be required to raise additional funds through the sale of equity securities, the refinancing of all or part of our indebtedness or the sale of assets. These alternatives are dependent upon financial, business and other general economic factors affecting us, many of which are beyond our control, and any or all of the alternatives may not be available to us. A significant drop in operating cash flows resulting from economic conditions, competition or other uncertainties beyond our control could increase the need for refinancing, new capital or both.

***The notes will be unsecured and effectively subordinated to our secured indebtedness and structurally subordinated to all of the liabilities of our subsidiaries that do not guarantee the notes.***

The notes will be our general senior unsecured obligations, ranking equal in right of payment with our existing and any future unsubordinated indebtedness. However, because they are unsecured, the notes will be effectively junior to any of our secured indebtedness as to claims against the assets securing such indebtedness. In addition, the notes will be effectively subordinated to all of the liabilities of our subsidiaries that do not guarantee the notes, including HomeAmerican. If the guarantors are released under their guarantees of the Specified Indebtedness (as defined by the indenture governing the terms of the notes to include our other senior notes outstanding on the date hereof) the guarantors will also be released under their guarantees of the notes. See “Description of Notes – Guarantees.” In the event of bankruptcy, liquidation or reorganization of any of the non-guarantor subsidiaries, holders of their indebtedness and their trade creditors will generally be entitled to payment on their claims from assets of those subsidiaries before any assets are made available for distribution to us. At September 30, 2013, our non-guarantor subsidiaries had approximately \$39.0 million of indebtedness reflected on our consolidated balance sheet to which the notes would be structurally subordinated. The indenture governing the notes does not restrict the ability of us and our subsidiaries (including our non-guarantor subsidiaries) to incur additional unsecured indebtedness, and will permit us and our subsidiaries to incur significant amounts of additional secured indebtedness.

*Our company structure may affect our ability to service our indebtedness under the notes.*

Substantially all of our operations are conducted through our homebuilding subsidiaries and HomeAmerican. As a result, we are dependent upon our subsidiaries' results of operations and rely on dividends, advances and transfers of funds from our subsidiaries to generate the funds necessary to meet our ongoing payment obligations under the notes. Our subsidiaries' ability to pay such dividends or make such advances and transfers will be subject to, among other things, applicable state law and contractual restrictions imposed by existing and future agreements and debt instruments that we or our subsidiaries have or may enter into.

*The indenture for the notes may not provide protection against events or developments that may affect our ability to repay the notes or the trading prices for the notes.*

The indenture governing the notes contains a covenant limiting the ability of us and our restricted subsidiaries to incur liens on our assets to secure indebtedness without equally and ratably securing the notes. This limitation is subject to a number of important exceptions.

With respect to the notes, the indenture governing the notes does not:

require us to offer to purchase the notes upon a change of control of the company;

require us to maintain any financial ratios or specific levels of net worth, revenues, income, cash flow or liquidity and, accordingly, does not protect holders of the notes in the event that we experience material adverse changes in our financial condition or results of operations;

limit the ability of us and our subsidiaries to incur indebtedness;

restrict our ability to pay dividends, prepay indebtedness ranking junior to the notes or make investments; or

restrict our ability to engage in any acquisition or other transaction, other than our ability to merge or consolidate with, or sell all or substantially all of our assets to, another person without the surviving or transferring person (if other than MDC Holdings) assuming the obligations under the notes.

You should be aware that under the indenture governing our 5.625% senior notes due 2020, we will be required to offer to purchase such notes at 101% of the principal amount thereof upon a change of control triggering event, as

defined in such indenture, even though we will not be required to offer to purchase the notes offered hereby upon a change of control triggering event.

In addition, we are subject to periodic review by independent credit rating agencies. An increase in the level of our outstanding indebtedness, or other events that could have an adverse impact on our business, properties, financial condition, results of operations or prospects, may cause the rating agencies to downgrade our credit ratings generally, and the ratings on the notes, which could adversely impact the trading prices for, or the liquidity of, the notes. Any such downgrade could also adversely affect our cost of borrowing, limit our access to the capital markets or result in more restrictive covenants in future debt agreements. Further, the credit ratings on the notes may not reflect the potential impact of all risks related to structure and other factors on the value of the notes.

The interest rate payable on the notes may be subject to adjustments from time to time upon the occurrence of a change of control and if the debt ratings assigned to the notes by Moody's Investors Service, Inc., Standard & Poor's Ratings Services and Fitch Ratings (or any replacement ratings agency selected by us) are below investment grade, or in the event of certain subsequent upgrades to the debt rating, as described under "Description of Notes—Interest Rate Adjustment Following a Change of Control."

*The interests of certain controlling shareholders may be adverse to the holders of the notes.*

Larry A. Mizel, David D. Mandarich and other of our affiliates beneficially own, directly or indirectly, in the aggregate, approximately 26% of our common stock as of December 31, 2013. To the extent they and their affiliates vote their shares in the same manner, their combined stock ownership may effectively give them the power to influence the election of members of our board of directors and other matters reserved for our shareholders. Circumstances may occur in which the interest of these shareholders could be in conflict with your interests. In addition, such persons may have an interest in pursuing transactions that, in their judgment, enhance the value of their equity investment in us, even though such transactions may involve risks to you.

*Federal and state laws allow courts, under specific circumstances, to void guarantees and to require you to return payments received from guarantors of the notes.*

The notes will be guaranteed by certain of our existing and future subsidiaries. The guarantees of the notes may be subject to review under U.S. federal bankruptcy law and comparable provisions of state fraudulent conveyance laws if a bankruptcy or reorganization case or lawsuit is commenced by or on behalf of our or one of a guarantor's unpaid creditors. Under these laws, if a court were to find in a bankruptcy or reorganization case or lawsuit that, at the time any guarantor issued its guarantee of the notes:

it issued the guarantee to delay, hinder or defraud present or future creditors; or

it received less than reasonably equivalent value or fair consideration for issuing the guarantee at the time it issued the guarantee and

it was insolvent or rendered insolvent by reason of issuing the guarantee, and the application of the proceeds of the notes of the guarantee; or

it was engaged, or about to engage, in a business or transaction for which its remaining unencumbered assets constituted unreasonably small capital to carry on its business; or

~~it~~ intended to incur, or believed that it would incur, debts beyond its ability to pay as they mature; or

it was a defendant in an action for money damages, or had a judgment for money damages docketed against it if, in either case, after final judgment, the judgment is unsatisfied;

then the court could void the obligations under such guarantee, subordinate the guarantee to that of the guarantor's other debt or take other action detrimental to you and the guarantees of the notes.

The measures of insolvency for purposes of fraudulent transfer laws vary depending upon the law of the jurisdiction that is being applied in any proceeding to determine whether a fraudulent transfer had occurred. Generally, however, a person would be considered insolvent if, at the time it incurred the debt:

the present fair saleable value of its assets was less than the amount that would be required to pay its probable liability on its existing debts, including contingent liabilities, as they become absolute and mature; or

it could not pay its debts as they become due.

We cannot be sure as to the standard that a court would use to determine whether or not the guarantors were solvent at the relevant time, or, regardless of the standard that the court uses, that the issuance of the guarantees would not be voided or the guarantees would not be subordinated to the guarantors' other debt. If such case were to occur, the guarantee could also be subject to the claim that, because the guarantee was incurred for the benefit of M.D.C. Holdings, Inc., and only indirectly for the benefit of the guarantor, the obligations of the applicable guarantor were incurred for less than fair consideration.

The indenture will contain a "savings clause" intended to limit each subsidiary guarantor's liability under its guarantee to the maximum amount that it could incur without causing the guarantee to be a fraudulent transfer under applicable law. This provision may not be upheld as intended. In one case, the U.S. Bankruptcy Court in the Southern District of Florida found this kind of provision to be ineffective, and held the subsidiary guarantees to be fraudulent transfers and voided them in their entirety.



***The IRS could determine that the notes are subject to contingent payment debt instrument rules, which would result in adverse tax consequences for holders of the notes.***

As discussed under “Certain United States Federal Income Tax Considerations – Certain Contingent Payments or Additional Interest,” there is uncertainty about the U.S. federal income tax treatment of our possible obligation to pay amounts in excess of the stated principal and interest upon an optional redemption of the notes, or to pay additional interest following a change of control, and specifically about whether these obligations could cause the notes to be subject to rules governing contingent payment debt instruments. Although we intend to take the position that these rules do not apply, if the IRS were to successfully take the contrary position, holders subject to U.S. federal income taxation could be required to accrue interest income prior to the time payments are made (possibly at a rate in excess of stated interest rate on the notes), and to report gain realized on a taxable disposition of the notes as ordinary interest income (rather than as capital gain).

***An active trading market for the notes may not develop or be maintained; many factors affect the trading market and value of the notes.***

The notes are a new issue of securities. There is no active public trading market for the notes, and the notes will not be listed on any stock exchange. An active trading market may not develop or be maintained for your notes, you may not be able to sell your notes and, even if you can sell your notes, you may not be able to sell them at an acceptable price.

***We may invest or spend the net proceeds of this offering in ways with which you may not agree and in ways that may not earn a profit.***

We intend to use the net proceeds from this offering for general corporate purposes, which may include repayment of our 5.375% Senior Notes due 2014 and 5.375% Senior Notes due 2015 in whole or in part. However, we will retain broad discretion over the use of the net proceeds from this offering. You may not agree with the ways we decide to use these proceeds, and our use of the proceeds may not yield any profits.

## Use of Proceeds

The net proceeds, after deducting the underwriting discount and other estimated offering expenses payable by us, from the sale of the notes offered hereby will be approximately \$248.1 million. We intend to use the net proceeds from this offering for general corporate purposes, which may include repayment of our 5.375% Senior Notes due 2014 and 5.375% Senior Notes due 2015 in whole or in part. Our management will determine the allocation and timing of the application of such net proceeds in light of market conditions and other relevant factors. Pending application of the net proceeds from this offering, we will invest these funds in cash or cash equivalents and marketable securities.

## Ratio of Earnings to Fixed Charges

The following table sets forth our consolidated ratio of earnings to fixed charges for the periods shown.

	<b>Nine Months Ended September 30, 2013</b>	<b>Year Ended December 31,</b>				
		<b>2012</b>	<b>2011</b>	<b>2010</b>	<b>2009</b>	<b>2008</b>
Ratio of earnings to fixed charges (unaudited)	2.98	2.12	—	—	—	—

In computing the ratio of earnings to fixed charges, fixed charges consist of homebuilding and corporate interest expense which includes the amortization and expensing of debt expenses that were not capitalized during period, mortgage lending interest expense, interest component of rent expense, and capitalized interest. Earnings are computed by adding fixed charges (except capitalized interest) and amortization of previously capitalized interest during the period to (loss) earnings before income taxes. For the years ended December 31, 2011, 2010, 2009 and 2008, the Company generated losses which exceeded fixed charges of \$127.8 million, \$80.7 million, \$96.4 million and \$367.9 million, respectively.

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**Capitalization**

The following table sets forth our unaudited cash and cash equivalents, marketable securities and capitalization at September 30, 2013, on a historical basis, and on an as adjusted basis to give effect to the issuance and sale of the notes offered hereby.

	<b>September 30, 2013</b>	
	<b>Actual</b>	<b>As Adjusted<sup>(1)</sup></b>
	<b>(unaudited)</b>	
	<b>(dollars in thousands)</b>	
Cash and cash equivalents	\$ 197,286	\$ 445,421
Marketable securities	\$ 600,257	\$ 600,257
<b>Debt:</b>		
<b>Senior Notes:</b>		
5.375% Senior Notes due 2014 <sup>(2)</sup>	\$ 249,765	\$ 249,765
5.375% Senior Notes due 2015 <sup>(2)</sup>	249,925	249,925
5.625% Senior Notes due 2020 <sup>(2)</sup>	245,731	245,731
6.000% Senior Notes due 2043 <sup>(2)</sup>	350,000	350,000
Senior Notes offered hereby	–	250,000
Total Senior Notes	1,095,421	1,345,421
Mortgage repurchase facility	38,912	38,912
Total debt <sup>(3)</sup>	\$ 1,134,333	\$ 1,384,333
Total stockholders' equity	\$ 1,180,432	\$ 1,180,432
Total capitalization	\$ 2,314,765	\$ 2,564,765

<sup>(1)</sup> Reflects the estimated net proceeds from the sale of the notes offered hereby (\$248.1 million) after deducting underwriting discount and estimated expenses related to this offering.

<sup>(2)</sup> Net of unamortized issuance costs.

We entered into the Credit Facility on December 13, 2013, under which we had no borrowings outstanding as of <sup>(3)</sup>December 31, 2013, excluding \$14.9 million of outstanding letters of credit. See "Description of Certain Other Indebtedness – Unsecured Revolving Credit Facility."

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## **Description of Certain Other Indebtedness**

### **Unsecured Revolving Credit Facility**

On December 13, 2013, we entered into an unsecured revolving credit facility with U.S. Bank National Association, Citibank, N.A., SunTrust Bank and PNC Bank, National Association and other lenders for support of our homebuilding operations (“Credit Facility”). Our Credit Facility has an aggregate commitment amount of \$450 million (the “Commitment”) and a maturity date of December 13, 2018. Each lender may issue letters of credit in an amount up to 50% of its commitment. The facility permits an increase in the maximum Commitment amount to \$1.0 billion upon our request, subject to receipt of additional commitments from existing or additional participant lenders. Interest rates on outstanding borrowings are determined by reference to a specified London Interbank Offered Rate (LIBOR), a specified federal funds effective rate or a specified prime rate, plus a margin that is determined based on our credit ratings and leverage ratio. At any time at which the Company’s leverage ratio, as of the last day of the most recent calendar quarter, exceeds 55%, the aggregate principal amount of all consolidated senior debt borrowings outstanding may not exceed the borrowing base. If the Company’s leverage ratio, as of the last day of the most recent calendar quarter, is 55% or less, then no borrowing base requirement will exist.

The Credit Facility is fully and unconditionally guaranteed, jointly and severally, by the same subsidiaries that will guaranty the notes offered hereby. The facility contains various representations, warranties and covenants customary for agreements of this type. The financial covenants include a consolidated tangible net worth test and a leverage test, along with a consolidated tangible net worth covenant, all as defined in the Credit Facility. A failure to satisfy the foregoing tests does not constitute an event of default, but can trigger a “term-out” of the Credit Facility. A breach of the consolidated tangible net worth covenant (but not the consolidated tangible net worth test) would result in an event of default.

The Credit Facility is subject to acceleration upon certain specified events of default, including breach of the consolidated tangible net worth covenant, failure to make timely payments, breaches of certain representations or covenants, failure to pay other material indebtedness, or another person becoming beneficial owner of 50% or more of MDC's outstanding common stock.

At December 31, 2013, we had no borrowings outstanding on our Credit Facility and had \$14.9 million in letters of credit issued, which reduced the amount available to be borrowed under the Credit Facility.

### **Mortgage Repurchase Facility**

HomeAmerican has a Master Repurchase Agreement (the “Mortgage Repurchase Facility”) with U.S. Bank National Association (“USBNA”). This agreement was amended on September 20, 2013 and extended until September 19, 2014. The Mortgage Repurchase Facility provides liquidity to HomeAmerican by providing for the sale of eligible mortgage loans to USBNA with an agreement by HomeAmerican to repurchase the mortgage loans at a future date. Until such mortgage loans are transferred back to HomeAmerican, the documents relating to such loans are held by USBNA, as custodian, pursuant to the Custody Agreement (“Custody Agreement”), dated as of November 12, 2008, by and between HomeAmerican and USBNA. The Mortgage Repurchase Facility has a maximum aggregate commitment of \$50 million, which was temporarily increased to \$80 million from December 31, 2013 through January 30, 2014. At September 30, 2013 and December 31, 2012, we had \$38.9 million and \$76.3 million (the Mortgage Repurchase Facility had a temporary increase in the commitment up to \$80 million from December 31, 2012 through January 31, 2013), respectively, of mortgage loans that we were obligated to repurchase under our Mortgage Repurchase Facility. Mortgage loans that we are obligated to repurchase under the Mortgage Repurchase Facility are accounted for as a debt financing arrangement and are reported as mortgage repurchase facility in the consolidated balance sheets. Advances under the Mortgage Repurchase Facility carry a Pricing Rate equal to the greater of (i) the LIBOR Rate (as defined in the Mortgage Repurchase Facility) plus 2.75%, or (ii) 3.00%.

The Mortgage Repurchase Facility contains various representations, warranties and affirmative and negative covenants customary for agreements of this type. The negative covenants include, among others, (i) an adjusted tangible net worth requirement, (ii) a minimum adjusted tangible net worth ratio, (iii) an adjusted net income requirement, and (iv) a minimum liquidity requirement.

We believe we were in compliance with the representations, warranties and covenants included in the Mortgage Repurchase Facility as of September 30, 2013.

## Letters of Credit

At September 30, 2013, we had issued and outstanding letters of credit totaling \$30.1 million, including \$15.5 million in letters of credit issued by HomeAmerican. The estimated cost to complete obligations related to these letters of credit was approximately \$10.1 million. We expect that the obligations secured by these letters of credit generally will be performed in the ordinary course of business and in accordance with the applicable contractual terms. To the extent that the obligations are performed, the related letters of credit should be released and we should not have any continuing obligations. However, in the event any such letters of credit are called, our indemnity obligations could require us to reimburse the issuer of the letter of credit.

## Senior Notes

The Company has outstanding \$250 million aggregate principal amount of 5.375% senior notes due December 15, 2014 (the “2014 Notes”), \$250 million aggregate principal amount of 5.375% senior notes due July 1, 2015 (the “2015 Notes”), \$250 million aggregate principal amount of 5.625% senior notes due February 1, 2020 (the “2020 Notes”) and \$350 million aggregate principal amount of 6.000% senior notes due January 15, 2043 (the “2043 Notes”). These outstanding notes have substantially the same covenants as the notes offered hereby except that we are required to offer to purchase the 2020 Notes (but not the notes offered hereby) at 101% of the principal amount thereof upon a change of control triggering event. The outstanding notes are unsecured and are guaranteed by the same subsidiaries that will guarantee the notes offered hereby. The outstanding notes are redeemable at our option at a “make-whole” premium based on a discount rate equal to the interest rate on the relevant Treasury security plus 20 basis points in the case of the 2014 Notes, 25 basis points in the case of the 2015 Notes, 35 basis points in the case of the 2020 Notes and 45 basis points in the case of the 2043 Notes.



## Description of Notes

The following description of the particular terms of the Notes offered by this prospectus supplement augments, and to the extent inconsistent replaces, the description of the terms and provisions of the debt securities under “Description of Debt Securities” in the accompanying prospectus.

## General

The Notes will be issued under an indenture dated as of December 3, 2002 (the “*2002 Indenture*”), as supplemented by a supplemental indenture to be dated as of January 15, 2014 (as supplemented and together with the 2002 Indenture, the “*Indenture*”), among the Company, the Guarantors and U.S. Bank National Association, as trustee (the “*Trustee*”).

We have summarized selected provisions of the Indenture below. The following summary of certain provisions of the Indenture is not necessarily complete and is subject to, and is qualified in its entirety by reference to, all the provisions of the Indenture, including the definitions of certain terms therein, and those terms made a part of the Indenture by the Trust Indenture Act of 1939, as amended (the “*TIA*”). Copies of the Indenture are available to prospective purchasers of the Notes upon request made to us at the address under “Where You Can Find More Information.” You should read the Indenture for provisions that may be important to you. For purposes of this “Description of Notes,” references to “we”, “our”, “us” or the “Company” mean M.D.C. Holdings, Inc. and do not include any of its subsidiaries. Definitions of certain terms are set forth under “Certain Definitions” and throughout this description. Capitalized terms that are used but not otherwise defined herein have the meanings assigned to them in the Indenture.

We may issue an unlimited amount of additional notes in the future as part of the same series or as an additional series. Any additional notes that we issue in the future will be identical in all respects to the notes that we are issuing now, except that any additional notes issued in the future may have different issuance prices and will have different issuance dates.

## Principal, Maturity and Interest

The Indenture does not limit the amount of debt securities that we may issue. We may issue debt securities under the Indenture from time to time in one or more series. The Notes will constitute a separate series of debt securities under the Indenture and will therefore vote together as a single class for purposes of determining whether holders of the

requisite percentage in principal amount thereof have taken actions or exercised rights they are entitled to take or exercise under the Indenture.

The Notes will mature on January 15, 2024. In this offering, \$250,000,000 aggregate principal amount of Notes will be issued, but we may issue additional Notes at any time on the same terms and conditions and with the same or different CUSIP number as the Notes we offer by this prospectus supplement. Interest on the Notes will accrue from January 15, 2014, at a rate of 5.500% per annum, will be computed on the basis of a 360-day year of twelve 30-day months and will be payable semi-annually in arrears on each January 15 and July 15 (each an “*Interest Payment Date*”), commencing on July 15, 2014. We will pay interest to the persons in whose names the Notes are registered at the close of business on January 1 or July 1, as the case may be, before any Interest Payment Date.

The Notes will be unsecured and unsubordinated obligations of the Company and will rank equally and ratably with our existing and future unsecured and unsubordinated indebtedness.

We conduct our operations through our subsidiaries and, therefore, we are primarily dependent on the earnings and cash flows of our subsidiaries to meet our debt service obligations.

Any right that we have or that our creditors have to participate in the assets of any of our subsidiaries upon any liquidation or reorganization of any such subsidiary will be subject to the prior claims of that subsidiary’s creditors, including trade creditors. Accordingly, the Notes will also be effectively subordinated to the creditors of our subsidiaries. The Notes will, however, have the benefit of the Guarantees from the Guarantors, which consist of certain of our homebuilding subsidiaries. The Guarantees from the Guarantors, however, are unsecured and, accordingly, will be effectively subordinated to the secured debt of the Guarantors. Our subsidiaries are separate and distinct legal entities and have no obligation, contingent or otherwise, to pay any amounts due pursuant to the Notes or to make any funds available therefor, whether by dividends, loans or other payments, other than as expressly provided in the Guarantees. The payment of dividends and the making of loans and advances to us by our subsidiaries are subject to contractual, statutory or regulatory restrictions, are contingent upon the earnings of those subsidiaries and are subject to various business considerations.

We expect that payments of principal, premium, if any, and interest to owners of beneficial interests in Notes held in global form will be made in accordance with the procedures of The Depository Trust Company (“DTC”) and its participants in effect from time to time. DTC will act as the Depository for the global Notes.

The Notes will not be entitled to the benefit of any sinking fund or mandatory redemption provisions.

The Notes will be issued only in fully registered form without coupons, in denominations of \$2,000 and integral multiples of \$1,000 in excess thereof.

The principal of, premium, if any, and interest on the Notes will be payable, and, subject to the restrictions on transfer described herein, the Notes may be surrendered for registration of transfer or exchange, at the office or agency maintained by us for that purpose in the Borough of Manhattan, The City of New York; *provided* that payments of interest may be made at our option by check mailed to the address of the persons entitled thereto or by wire transfer to an account maintained by the payee with a bank located in the United States. The office or agency initially maintained by us for the foregoing purposes shall be the office of the Trustee. No service charge will be made for any registration of transfer or exchange of the Notes, but we may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection herewith.

If any Interest Payment Date or maturity date of the Notes is not a business day at any place of payment, then payment of principal, premium, if any, and interest need not be made at such place of payment on that date but may be made on the next succeeding business day at that place of payment, and no interest will accrue on the amount payable for the period from and after such Interest Payment Date or maturity date, as the case may be.

The Indenture does not limit the amount of indebtedness that we or our subsidiaries may issue. The Indenture does not contain covenants or other provisions designed to afford holders of the Notes protection in the event of a highly leveraged transaction, change in credit rating or other similar occurrence.

We expect that interests in the global Notes will trade in DTC’s Same-Day Funds Settlement System and secondary market trading activity in these interests will therefore be required by DTC to settle in immediately available funds.

#### **Interest Rate Adjustment Following A Change of Control**

If a Change of Control occurs and within 60 days thereafter all three of the Ratings Agencies have less than Investment Grade debt ratings assigned to the Notes, whether as a result of a downgrade or otherwise, the per annum interest rate on the Notes will increase from the interest rate payable on the Notes immediately before the Change of Control. The interest rate will increase by 0.25% for each rating level below Investment Grade by each of the two Rating Agencies with the lowest ratings (i.e., if two Rating Agencies are two levels below Investment Grade and the third Rating Agency is one level below Investment Grade, the interest rate increase will be 1.00% per annum). In the event that only two Rating Agencies have debt ratings assigned to the Notes, those two debt ratings will be used to determine any interest rate increase. In the event that only one Rating Agency has a debt rating assigned to the Notes, the interest rate increase will be two times 0.25% for each rating level below Investment Grade by the Rating Agency that has a debt rating assigned to the Notes. In the event that no Rating Agency has a debt rating assigned to the Notes, the interest rate increase will be 2.00% per annum. Any downgrade of the ratings assigned to the Notes that occurs outside of the 60 day period will not alter the per annum interest rate.

In no event shall: (1) the total increase in the interest rate on the Notes exceed 2.00% per annum above the interest rate payable on the Notes on the date of their initial issuance; or (2) the interest rate increase unless the debt ratings on the Notes by all Rating Agencies that have debt ratings assigned to the Notes are below Investment Grade within 60 days after the Change of Control.

If at any time after the interest rate on the Notes has been adjusted upward pursuant to this provision as a result of a Rating Agency rating the Notes below Investment Grade, that Rating Agency (or a replacement rating agency selected by us under the circumstance set forth in, and in accordance with, the definition of "Rating Agency") thereafter increases its rating with respect to the Notes, the per annum interest rate on the Notes will decrease by 0.25% per annum (or, if the debt rating for only one Rating Agency was used to determine the interest rate increase pursuant to the fourth sentence of the first paragraph of this "Interest Rate Adjustment Following a Change of Control" section, two times 0.25% per annum) for each level of improvement in the rating of the Notes by such Rating Agency; provided that the decrease in interest rate resulting therefrom will not exceed the aggregate percentage increase in the interest rate that resulted from the prior lower rating by such Rating Agency. In no event will the interest rate on the Notes ever be less than the interest rate payable on the Notes on the date of their initial issuance.

Any interest rate change described above will take effect as of the first day of the interest period for which the next interest payment will be made.

The interest rate on the Notes will permanently cease to be subject to any adjustment described above (notwithstanding any subsequent decrease in the ratings by any Rating Agency) if all of the Rating Agencies subsequently increase their rating of the Notes to the following levels at the same time (Moody's: A3; S&P: A-; Fitch A-; or the equivalent if with respect to any substitute rating agency) or higher.

### **Guarantees**

Payment of principal of, premium, if any, and interest on the Notes will be guaranteed fully and unconditionally, jointly and severally, by certain of our homebuilding subsidiaries. Each Guarantee will be an unsecured senior obligation of the Guarantor issuing such Guarantee, ranking equal in right of payment with all of such Guarantor's existing and future unsecured and unsubordinated indebtedness.

The Indenture provides that, in the event any Guarantee would constitute or result in a violation of any applicable fraudulent conveyance or similar law of any relevant jurisdiction, the liability of the Guarantor under such Guarantee shall be reduced to the maximum amount, after giving effect to all other contingent and other liabilities of such Guarantor, permissible under applicable fraudulent conveyance or similar law.

The Indenture provides that any subsidiary of the Company that provides a guarantee of any Specified Indebtedness, other than Finance Subsidiaries, will guarantee the Notes. The Indenture provides that any Guarantor may be released from its Guarantee so long as (1) no default or Event of Default exists or would result from release of such Guarantee, (2) the Guarantor being released has Consolidated Net Worth of less than 5% of the Company's Consolidated Net Worth as of the end of the most recent fiscal quarter, (3) the Guarantors released from their Guarantees in any year-end period comprise in the aggregate less than 10% (or 15% if and to the extent necessary to permit us to cure a default) of the Company's Consolidated Net Worth as of the end of the most recent fiscal quarter, (4) such release would not have a material adverse effect on the homebuilding business of the Company and its subsidiaries and (5) the Guarantor is released from its guarantee(s) under all Specified Indebtedness (other than by reason of payment under its guarantee of Specified Indebtedness).

By reason of the foregoing, if the Guarantors are released under their guarantees of our other Specified Indebtedness, the Guarantors will also be released under their Guarantees of the Notes and the other notes issued under the 2002 Indenture.

See “Risk Factors – Risks Relating to the Notes – The notes will be unsecured and effectively subordinated to our secured indebtedness and structurally subordinated to all of the liabilities of our subsidiaries that do not guarantee the notes” and “— Federal and state laws allow courts, under specific circumstances, to void guarantees and to require you to return payments received from guarantors of the notes.”

### **Optional Redemption**

We may, at our option, redeem the Notes in whole at any time or in part from time to time, as set forth below on at least 30 but not more than 60 days’ prior notice.

If the Notes are redeemed prior to October 15, 2023, the redemption price for the Notes to be redeemed will equal the greater of the following amounts:

100% of their principal amount, and

the present value of the Remaining Scheduled Payments on the Notes being redeemed on the redemption date, discounted to the redemption date, on a semi-annual basis, at the Treasury Rate plus 50 basis points (0.50%),

plus, in each case, accrued and unpaid interest on the Notes to the redemption date.

If the Notes are redeemed on or after October 15, 2023, the redemption price for the Notes to be redeemed will equal 100% of the principal amount of such Notes, plus accrued and unpaid interest to the redemption date. In determining the redemption price and accrued interest, interest shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.

If money sufficient to pay the redemption price of and accrued interest on the Notes to be redeemed is deposited with the Trustee on or before the redemption date, on and after the redemption date interest will cease to accrue on the Notes (or such portions thereof) called for redemption and the Notes will cease to be outstanding.

On and after the redemption date, interest will cease to accrue on the Notes or any portion of the Notes called for redemption (unless we default in the payment of the redemption price and accrued interest). On or before the redemption date, we will deposit with a paying agent (or the Trustee) money sufficient to pay the redemption price of and accrued interest on the Notes to be redeemed on that date. If less than all of the Notes are to be redeemed, the Notes to be redeemed shall be selected by lot by DTC, in the case of Notes represented by a global security.

### **Certain Covenants**

*Restrictions on Secured Debt.* The Indenture provides that the Company will not, and will not cause or permit a Restricted Subsidiary (other than any Finance Subsidiary) to, create, incur, assume or guarantee any Secured Debt unless the Notes will be secured equally and ratably with (or prior to) such Secured Debt, with certain exceptions. This restriction does not prohibit the creation, incurrence, assumption or guarantee of Secured Debt which is secured by:

- (1) Security Interests in model homes, homes held for sale, homes that are under contract for sale, contracts for the sale of homes, land (improved or unimproved), manufacturing plants, warehouses or office buildings and fixtures and equipment located thereat or thereon;
- (2) Security Interests in property at the time of its acquisition by the Company or a Restricted Subsidiary, including Capitalized Lease Obligations, which Security Interests secure obligations assumed by the Company or a Restricted Subsidiary, or in the property of a corporation or other entity at the time it is merged into or consolidated with the Company or a Restricted Subsidiary (other than Secured Debt created in contemplation of the acquisition of such property or the consummation of such a merger or where the Security Interest attaches to or affects the property of the

Company or a Restricted Subsidiary prior to such transaction);

(3) Security Interests arising from conditional sales agreements or title retention agreements with respect to property acquired by the Company or a Restricted Subsidiary;

(4) Security Interests incurred in connection with pollution control, industrial revenue, water, sewage or any similar item; and

(5) Security Interests securing Indebtedness of a Restricted Subsidiary owing to the Company or a Restricted Subsidiary that is wholly owned (directly or indirectly) by the Company or Security Interests securing the Company's Indebtedness owing to a Guarantor.

Additionally, such permitted Secured Debt includes any amendment, restatement, supplement, renewal, replacement, extension or refunding, in whole or in part, of Secured Debt permitted at the time of the original incurrence thereof.

In addition, the Company and the Guarantors may create, incur, assume or guarantee Secured Debt, without equally and ratably securing the Notes, if immediately thereafter the sum of (1) the aggregate principal amount of all Secured Debt outstanding (excluding Secured Debt permitted under clauses (1) through (5) above and any Secured Debt in relation to which the Notes have been equally and ratably secured) and (2) all Attributable Debt (as defined below) in respect of Sale and Leaseback Transactions (excluding Attributable Debt in respect of Sale and Leaseback Transactions as to which the provisions of clauses (1) through (3) described under "Limitation on Sale and Leaseback Transactions" have been complied with) as of the date of determination would not exceed 20% of Consolidated Net Tangible Assets (as defined below).



The provisions described above with respect to limitations on Secured Debt are not applicable to Non-Recourse Indebtedness (as defined below) by virtue of the definition of Secured Debt, and will not restrict the Company's or the Guarantors' ability to create, incur, assume or guarantee any unsecured Indebtedness, or of any Subsidiary which is not a Restricted Subsidiary to create, incur, assume or guarantee any secured or unsecured Indebtedness.

*Limitation on Sale and Leaseback Transactions.* The Indenture provides that we will not, and will not cause or permit a Restricted Subsidiary to, enter into any Sale and Leaseback Transaction unless:

the net proceeds received therefrom are equal to or exceed the fair value of such property so leased, as determined by the Board of Directors, chairman of the board, vice chairman, president or principal financial officer of the Company,

we or any of our Restricted Subsidiaries would be entitled to incur Secured Debt as described in "Restrictions on Secured Debt" above,

we, or a Restricted Subsidiary, within 180 days of the effective date of any Sale and Leaseback Transaction, apply an amount equal to the fair value of the property so leased to the retirement of our Funded Indebtedness,

the Sale and Leaseback Transaction relates to a sale which occurs within 180 days from the date of acquisition of that property by us or any of our Restricted Subsidiaries or the date of the completion of construction or commencement of full operations on that property, whichever is later, or

the Sale and Leaseback Transaction was consummated prior to the date of the Indenture.

*Additional Guarantees.* The Indenture provides that the Company shall not permit any Subsidiary that is not a Guarantor, directly or indirectly, to guarantee any obligations of the Company under any Specified Indebtedness unless such Subsidiary simultaneously executes and delivers to the Trustee a supplemental indenture, in a form reasonably satisfactory to the Trustee, pursuant to which such Subsidiary guarantees, jointly and severally with all other Guarantors, on the same basis as the Specified Indebtedness is guaranteed, the Company's obligations under the Indenture and the Notes. The Company shall deliver to the Trustee an opinion of counsel that such supplemental indenture has been duly authorized, executed and delivered by such Subsidiary and, subject to customary exceptions, constitutes a valid and legally binding and enforceable obligation of such Subsidiary.

*SEC Reports.* The Indenture provides that we will deliver to the Trustee and each Holder, within 15 days after we file the same with the SEC, copies of all reports and information (or copies of such portions of any of the foregoing as the SEC may by rules and regulations prescribe), if any, exclusive of exhibits, which we are required to file with the SEC pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") or pursuant to the immediately following sentence. So long as any Notes remain outstanding, we shall file with the SEC such reports

as may be required pursuant to Section 13 of the Exchange Act in respect of a security registered pursuant to Section 12 of the Exchange Act. If we are not subject to the requirements of Section 13 or 15(d) of the Exchange Act (or otherwise required to file reports pursuant to the immediately preceding sentence), we shall deliver to the Trustee and to each Holder, within 15 days after we would have been required to file such information with the SEC were we required to do so, financial statements, including any notes thereto (and, in the case of a fiscal year end, an auditors' report by an independent certified public accounting firm of established national reputation), and a "Management's Discussion and Analysis of Financial Condition and Results of Operations," substantially equivalent to that which we would have been required to include in such quarterly or annual reports, information, documents or other reports if we had been subject to the requirements of Section 13 or 15(d) of the Exchange Act. We shall also comply with the other provisions of TIA Section 314(a).

### **Consolidation, Merger and Sale of Assets**

Neither the Company nor the Guarantors will consolidate or merge into or sell, assign, transfer or lease all or substantially all of our or their assets to another person unless:

- (1) the person is a corporation organized under the laws of the United States of America or any state thereof;
- (2) the person assumes by supplemental indenture all of the obligations of us or such Guarantor, as the case may be, relating to the Notes, the Guarantees and the Indenture, as the case may be; and

(3) immediately after the transaction no Event of Default exists; *provided* that this clause (3) will not restrict or be applicable to a merger, consolidation or liquidation of a Guarantor with or into the Company or another Subsidiary that is wholly owned, directly or indirectly, by the Company that is, or concurrently with the completion of such merger, consolidation or liquidation becomes, a Guarantor or a Restricted Subsidiary that is wholly owned, directly or indirectly, by the Company.

Upon any such consolidation, merger, sale, assignment or transfer, the successor corporation will be substituted for the Company or such Guarantor (including any merger or consolidation described in the proviso at the end of the immediately preceding sentence), as applicable, under the Indenture. The successor corporation may then exercise every power and right of the Company or such Guarantor under the Indenture, and the Company or such Guarantor, as applicable, will be released from all of its respective liabilities and obligations in respect of the Notes and the Indenture. If the Company or any Guarantor leases all or substantially all of its assets, the lessee corporation will be the successor to the Company or such Guarantor and may exercise every power and right of the Company or such Guarantor, as the case may be, under the Indenture, but the Company or such Guarantor, as the case may be, will not be released from its respective obligations to pay the principal of and premium, if any, and interest, if any, on the Notes.

#### **Events of Default**

An “Event of Default” with respect to the Notes is defined in the Indenture as being:

- (1) default in the payment of interest on the Notes as and when the same becomes due and payable and the continuance of any such failure for 30 days;
- (2) default in the payment of all or any part of the principal or premium, if any, on the Notes when and as the same become due and payable at maturity, at redemption, by declaration of acceleration or otherwise;
- (3) default in the observance or performance of, or breach of, any covenant, agreement or warranty of the Company contained in the Notes or the Indenture (unless specifically dealt with elsewhere), and continuance of such default or breach for a period of 60 days after there has been given, by registered or certified mail, to the Company by the Trustee, or to the Company and the Trustee by Holders of at least 25% in aggregate principal amount of the outstanding Notes, a written notice specifying such default or breach, requiring it to be remedied and stating that such notice is a “Notice of Default” thereunder;

(4) a decree, judgment or order by a court of competent jurisdiction shall have been entered adjudging the Company or any of its Significant Subsidiaries as bankrupt or insolvent, or approving as properly filed a petition in an involuntary case or proceeding seeking reorganization of the Company or any of its Significant Subsidiaries under any bankruptcy or similar law, or a decree, judgment or order of a court of competent jurisdiction directing the appointment of a receiver, liquidator, trustee, or assignee in bankruptcy or insolvency of the Company, any of its Significant Subsidiaries, or of the assets or property of any such Person, or the winding up or liquidation of the affairs of any such Person, shall have been entered, and the continuance of any such decree, judgment or order unstayed and in effect for a period of 90 consecutive days;

(5) the Company or any of its Significant Subsidiaries shall institute proceedings to be adjudicated a voluntary bankrupt (including conversion of an involuntary proceeding into a voluntary proceeding), or shall consent to the filing of a bankruptcy proceeding against it, or shall file a petition or answer or consent to the filing of any such petition, or shall consent to the appointment of a custodian, receiver, liquidator, trustee, or assignee in bankruptcy or insolvency of it or any of its assets or property, or shall make a general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall, within the meaning of any Bankruptcy Law, become insolvent, or fail generally to pay its debts as they become due;

(6) (a) the acceleration of any Indebtedness (other than Non-Recourse Indebtedness) of the Company or any of its Significant Subsidiaries (in accordance with the terms of such Indebtedness and after giving effect to any applicable grace period set forth in the documents governing such Indebtedness) that has an outstanding principal amount of \$25,000,000 or more individually or \$40,000,000 or more in the aggregate to be immediately due and payable; *provided* that, in the event any such acceleration is withdrawn or otherwise rescinded (including satisfaction of such Indebtedness) within a period of ten business days after such acceleration by the holders of such Indebtedness, any Event of Default under this clause (6) will be deemed to be cured and any acceleration hereunder will be deemed withdrawn or rescinded; or (b) the failure by the Company or any of its Significant Subsidiaries to make any principal, premium, interest or other required payment in respect of Indebtedness (other than Non-Recourse Indebtedness) of the Company or any of its Significant Subsidiaries with an outstanding aggregate principal amount of \$25,000,000 or more individually or \$40,000,000 or more in the aggregate (after giving effect to any applicable grace period set forth in the documents governing such Indebtedness);

(7) one or more final nonappealable judgments (in the amount not covered by insurance or not reserved for) or the issuance of any warrant of attachment against any portion of the property or assets (except with respect to Non-Recourse Indebtedness) of the Company or any of its Restricted Subsidiaries, which are \$25,000,000 or more individually or \$40,000,000 or more in the aggregate, at any one time rendered against the Company or any of its Restricted Subsidiaries by a court of competent jurisdiction and not bonded, satisfied or discharged for a period (during which execution shall not be effectively stayed) of (a) 60 days after the judgment becomes final and such court shall not have ordered or approved, and the parties shall not have agreed upon, the payment of such judgment at a later date or dates or (b) 60 days after all or any part of such judgment is payable pursuant to any court order or agreement between the parties; or

(8) the Guarantee of any Guarantor shall fail to remain in full force and effect except in accordance with the Indenture or any action shall be taken by any Guarantor to discontinue or to assert the invalidity or unenforceability of its Guarantee, or any Guarantor shall fail to comply with any of the terms or provisions of its Guarantee, or any Guarantor denies that it has any further liability under its Guarantee or gives notice to such effect.

The Indenture provides that if an Event of Default (other than an Event of Default described in clause (4) or (5) above) shall have occurred and be continuing, either the Trustee or the holders of at least 25% in aggregate principal amount of Notes then outstanding may declare the principal amount of all the Notes and interest, if any, accrued thereon to be due and payable immediately, but upon certain conditions such declaration may be annulled and past defaults (except, unless cured, a default in payment of principal of or interest on the Notes) may be waived by the holders of a majority in principal amount of the Notes then outstanding. If an Event of Default described in clause (4) or (5) above occurs and is continuing, then the principal amount of all the debt securities shall become and be immediately due and payable without any declaration or other act on the part of the Trustee or any holder.

The Indenture contains a provision entitling the Trustee, subject to the duty of the Trustee during default to act with the required standard of care, to be indemnified by the holders of the Notes before proceeding to exercise any right or power under the Indenture at the request of the holders of the Notes. The Indenture also provides that the holders of a majority in principal amount of the Notes may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on such Trustee.

No holder of Notes will have any right to institute any proceeding with respect to the Indenture or for any remedy thereunder, unless: (1) the holder shall have previously given the Trustee written notice of an Event of Default with respect to the Notes, (2) the holders of at least 25% in aggregate principal amount of the outstanding Notes shall have made written request, and offered reasonable indemnity, to the Trustee to institute such proceeding as trustee, (3) the Trustee shall have failed to institute any such proceeding for 60 days after its receipt of such notice and (4) no direction inconsistent with such written request shall have been given to the Trustee during the 60-day period by the holders of a majority in principal amount of the Notes. However, any right of a holder of Notes to receive payment of the principal of and any interest on the Notes on or after the dates expressed in the Notes and to institute suit for the enforcement of any such payment on or after such dates shall not be impaired or affected without the consent of such holder.

The Indenture contains a covenant that we will file annually with the Trustee a certificate as to the absence of any default or specifying any default that exists.

### **Certain Definitions**

“*Attributable Debt*” means, in respect of a Sale and Leaseback Transaction, the present value (discounted at the weighted average effective interest cost per annum of the outstanding debt securities of all series, compounded semiannually) of the obligation of the lessee for rental payments during the remaining term of the lease included in such transaction, including any period for which such lease has been extended or may, at the option of the lessor, be extended or, if earlier, until the earliest date on which the lessee may terminate such lease upon payment of a penalty (in which case the obligation of the lessee for rental payments shall include such penalty), after excluding all amounts required to be paid on account of maintenance and repairs, insurance, taxes, assessments, water and utility rates and similar charges.

“*Capital Stock*” means any and all shares, interests, participations or other equivalents (however designated) of or in a Person’s capital stock or other equity interests, and options, rights or warrants to purchase such capital stock or other equity interests, whether now outstanding or issued after the Issue Date, including, without limitation, all Preferred Stock of such Person if such Person is a corporation or membership interests if such Person is a limited liability company and each general and limited partnership interest of such Person if such Person is a partnership.

“*Capitalized Lease Obligations*” of any Person means the obligations of such Person to pay rent or other amounts under a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP, and the amount of such obligations will be the capitalized amount thereof determined in accordance with GAAP.

“*Change of Control*” means the consummation of any transaction (including, without limitation, any merger or consolidation) the result of which is that any “person” (as that term is used in Section 13(d)(3) of the Exchange Act) becomes the beneficial owner, directly or indirectly, of more than 50% of our Voting Stock, measured by voting power rather than number of shares. Notwithstanding the foregoing, a transaction will not be deemed to involve a Change of Control if (1) the Company becomes a wholly owned subsidiary of a holding company and (2) the holders of the Voting Stock of such holding company immediately following that transaction are substantially the same as the holders of the Company’s Voting Stock immediately prior to that transaction.

“*Comparable Treasury Issue*” means the United States Treasury security selected by the Reference Treasury Dealer as having a maturity comparable to the remaining term of the Notes to be redeemed that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of comparable maturity to the remaining term of such Notes.

“*Comparable Treasury Price*” means, with respect to any redemption date, (a) the average of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) on the third business day preceding such redemption date, as set forth in the daily statistical release (or any successor release) published by the Federal Reserve Bank of New York and designated “Composite 3:30 p.m. Quotations for U.S. Government Securities” or (b) if such release (or any successor release) is not published or does not contain such price on such business day, (i) the average of the Reference Treasury Dealer quotations for such redemption date, after excluding the highest and lowest such Reference Treasury Dealer Quotations, or (ii) if the Trustee obtains fewer than four such Reference Treasury Dealer Quotations, the average of all such quotations.

“*Consolidated Net Tangible Assets*” means the total amount of assets which would be included on a combined balance sheet of the Company and the Guarantors under GAAP (less applicable reserves and other properly deductible items) after deducting therefrom:

(1) all short-term liabilities, except for (x) liabilities payable by their terms more than one year from the date of determination (or renewable or extendible at the option of the obligor for a period ending more than one year after such date) and (y) liabilities in respect of retiree benefits other than pensions for which the Restricted Subsidiaries are required to accrue pursuant to Statement of Financial Accounting Standards No. 106;

(2) investments in subsidiaries that are not Restricted Subsidiaries; and

(3) all goodwill, trade names, trademarks, patents, unamortized debt discount, unamortized expense incurred in the issuance of debt and other intangible assets.

“*Consolidated Net Worth*” of any Person means the consolidated stockholders’ equity of the Person determined in accordance with GAAP.

“*Credit Facility*” means the credit agreement dated as of December 13, 2013, among the Company, its subsidiaries parties thereto as guarantors, U.S. Bank National Association, as designated agent and co-administrative agent, Citibank, N.A., as co-administrative agent, and the other lenders party thereto, as amended or supplemented from time to time, and any refinancing, extension, renewal or replacement thereof.

“*Finance Subsidiary*” means any Subsidiary of the Company substantially all of whose operations consist of (a) the mortgage financing business or (b) the insurance business.

“*Fitch*” means Fitch Ratings.



“*Funded Indebtedness*” means notes, bonds, debentures or other similar evidences of Indebtedness for money borrowed which by their terms mature at or are extendible or renewable at the option of the obligor to a date more than 12 months after the date of the creation of such debt.

“*GAAP*” means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession of the United States, as in effect on the date of the Indenture.

“*Guarantee*” means a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of business), direct or indirect, in any manner (including, without limitation, letters of credit and reimbursement agreements in respect thereof), of all or any part of any Indebtedness.

“*Guarantors*” means (i) initially, each of:

M.D.C. Land Corporation, a Colorado corporation;

RAH of Florida, Inc., a Colorado corporation;

Richmond American Construction, Inc., a Delaware corporation;

Richmond American Homes of Arizona, Inc., a Delaware corporation;

Richmond American Homes of Colorado, Inc., a Delaware corporation;

Richmond American Homes of Delaware, Inc., a Colorado corporation;

Richmond American Homes of Florida, LP, a Colorado limited partnership;

Richmond American Homes of Illinois, Inc., a Colorado corporation;

Richmond American Homes of Maryland, Inc., a Maryland corporation;

Richmond American Homes of Nevada, Inc., a Colorado corporation;

Richmond American Homes of New Jersey, Inc., a Colorado corporation;

Richmond American Homes of Pennsylvania, Inc., a Colorado corporation;

Richmond American Homes of Utah, Inc., a Colorado corporation;

Richmond American Homes of Virginia, Inc., a Virginia corporation; and

Richmond American Homes of Washington, Inc., a Colorado corporation;

and (ii) any other Subsidiary of the Company that executes and delivers a guarantee of the Notes pursuant to the provisions of the Indenture.

“*Indebtedness*” means (a) any liability of any Person (i) for borrowed money, or (ii) evidenced by a bond, note, debenture or similar instrument (including a purchase money obligation) given in connection with the acquisition of any businesses, properties or assets of any kind (other than a trade payable or a current liability arising in the ordinary course of business), or (iii) for the payment of money relating to a Capitalized Lease Obligation or (iv) for all Redeemable Capital Stock valued at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; (b) any liability of others described in the preceding clause (a) that such Person has guaranteed or that is otherwise its legal liability; (c) all Indebtedness referred to in (but not excluded from) clauses (a) and (b) above of other Persons and all dividends of other Persons, the payment of which is secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Security Interest upon or in property (including, without limitation, accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness; and (d) any amendment, supplement, modification, deferral, renewal, extension or refunding of any liability of the types referred to in clauses (a), (b) and (c) above.

“*Interest Payment Date*” means the stated due date of an installment of interest on the Notes.

“*Investment Grade*” means a rating of Baa3 or better by Moody’s (or its equivalent under any successor rating categories of Moody’s); a rating of BBB- or better by Fitch (or its equivalent under any successor rating categories of Fitch); a rating of BBB- or better by S&P (or its equivalent under any successor rating categories of S&P); and the equivalent investment grade credit rating from any additional Rating Agency or Rating Agencies selected by us.

“*Moody’s*” means Moody’s Investors Service, Inc.

“*Non-Recourse Indebtedness*” means Indebtedness or other obligations secured by a lien on property to the extent that the liability for the Indebtedness or other obligations is limited to the security of the property without liability on the part of the Company or any Restricted Subsidiary (other than the Restricted Subsidiary which holds title to the property) for any deficiency.

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“Notes” means the 5.500% Senior Notes due 2024, issued under the Indenture, as supplemented from time to time in accordance with the terms of the Indenture.

“Person” means any individual, corporation, partnership, limited liability company, joint venture, incorporated or unincorporated association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

“Preferred Stock” of any Person means all Capital Stock of such Person which has a preference in liquidation or with respect to the payment of dividends.

“Rating Agency” means (1) each of Moody’s, Fitch and S&P; and (2) if any of Moody’s, Fitch or S&P ceases to rate the Notes or fails to make a rating of the Notes publicly available (for reasons outside of our control), a “nationally recognized statistical rating organization” registered under Section 15E of the Exchange Act, selected by us (as certified by a resolution of our board of directors) as a replacement agency for Moody’s, Fitch or S&P, or all three, as the case may be.

“Redeemable Capital Stock” means any Capital Stock of the Company or any of its Subsidiaries that, either by its terms, by the terms of any security into which it is convertible or exchangeable or otherwise, (a) is or upon the happening of an event or passage of time would be required to be redeemed on or prior to the final stated maturity of the securities or (b) is redeemable at the option of the holder thereof at any time prior to such final stated maturity or (c) is convertible into or exchangeable for debt securities at any time on or prior to such final stated maturity.

“Reference Treasury Dealer” means (a) Citigroup Global Markets Inc. (or its affiliates which are Primary Treasury Dealers), and its successors; *provided, however*, that if any of the foregoing shall cease to be a primary U.S. Government securities dealer in New York City (a “Primary Treasury Dealer”), the Company will substitute therefor another Primary Treasury Dealer, and (b) any other Primary Treasury Dealer(s) selected by us.

“Reference Treasury Dealer Quotations” means, with respect to each Reference Treasury Dealer and any redemption date, the average, as determined by the Trustee, of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) quoted in writing to the Trustee by such Reference Treasury Dealer at 5:00 p.m. on the third business day preceding such redemption date.

“Remaining Scheduled Payments” means, with respect to any Note, the remaining scheduled payments of the principal thereof to be redeemed and interest thereon that would be due after the related redemption date but for such

redemption; *provided, however*, that if such redemption date is not an Interest Payment Date with respect to such Note, the amount of the next succeeding scheduled interest payment thereon will be reduced by the amount of interest accrued thereon to such redemption date.

“*Restricted Subsidiary*” means any Guarantor and any successor to such Guarantor.

“*Sale and Leaseback Transaction*” means a sale or transfer made by the Company or a Restricted Subsidiary (except a sale or transfer made to the Company or a Restricted Subsidiary) of any property which is either (a) a manufacturing facility, office building or warehouse whose book value equals or exceeds 1% of Consolidated Net Tangible Assets as of the date of determination or (b) another property (not including a model home) which exceeds 5% of Consolidated Net Tangible Assets as of the date of determination, if such sale or transfer is made with the agreement, commitment or intention of leasing such property to the Company or a Restricted Subsidiary for more than a three-year term.

“*Secured Debt*” means any Indebtedness, except Indebtedness of the Finance Subsidiaries, which is secured by (i) a Security Interest in any of the property of the Company or any Restricted Subsidiary or (ii) a Security Interest in shares of stock owned directly or indirectly by the Company or a Restricted Subsidiary in a corporation or in equity interests owned by the Company or a Restricted Subsidiary in a partnership or other entity not organized as a corporation or in the Company’s rights or the rights of a Restricted Subsidiary in respect of Indebtedness of a corporation, partnership or other entity in which the Company or a Restricted Subsidiary has an equity interest. The securing in the foregoing manner of any such Indebtedness which immediately prior thereto was not Secured Debt shall be deemed to be the creation of Secured Debt at the time security is given.

“*Security Interests*” means any mortgage, pledge, lien, encumbrance or other security interest which secures the payment or performance of an obligation.

“*Significant Subsidiary*”